

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 18, 1994

Mr. Jeffrey L. Woolstrun, Esq.
Honigman Miller Schwartz and Cohn
2299 First National Building
Detroit, Michigan 48226-3583

Dear Mr. Woolstrun:

I am writing in response to your letter of July 6, 1994 to Norman Neidergang, Associate Division Director in the Environmental Protection Agency's (EPA's) Region V office. You requested a written determination of the regulatory status of ash generated by a municipal waste combustor that burns only household waste and does not recover energy.

EPA agrees with the conclusion set out in your letter. Ash from combustors that do not recover energy, and that burn only household waste, was first exempted from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) under the so-called "household waste exclusion" that EPA promulgated in May, 1980. The Supreme Court's recent decision in City of Chicago v. EDF, No.92-1639 (S.Ct. May 2, 1994), interpreting section 3001(i) of RCRA, did not change this result.

As you point out in your letter, both section 3001(i) and the Supreme Court's decision are expressly limited to combustors that recover energy. Consequently, although the Court held that ash from resource recovery facilities that burn household waste is not exempt from RCRA, its decision has no impact on combustors that burn only household waste and do not recover energy. EPA still considers ash from non-resource recovery combustors that burn only household wastes to be exempt from RCRA hazardous waste regulation under the 1980 exclusion. You should be aware, however, that once the incinerator burns other wastes in addition to household waste (e.g., commercial waste), the ash from that process would no longer qualify for the household waste exclusion. Also, because many garbage collection programs do not normally segregate household waste from commercial waste, it may be difficult for an incinerator to demonstrate that it accepts only household waste.

Although EPA considers ash from combustors that burn only household waste and do not recover energy to be exempt, states that are authorized to implement state hazardous waste programs in lieu of the federal program may not share this view. As you probably know, section 3009 of RCRA expressly allows states to regulate hazardous waste more stringently than EPA does. Some states may not exempt any household wastes, or may have household waste exclusions that do not extend to ash. To determine the actual regulatory status of ash from the combustion of household waste, you should also consult state law.

If you have any further questions about EPA's views on this issue, please feel free to call Andrew Teplitzky of the Office of Solid Waste (202-260-4536) or Christina Kaneen of the Office of General Counsel (202-260-7720).

Sincerely,

Bruce R. Weddle, Director
Municipal and Industrial
Solid Waste Division

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